IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 229 OF 2000

Dr. P. S. Krishnamurthy,
of major age, occupation
retired Professor (From
GMC), presently r/o
'Tirumala', Post Office,
Alto Betim, Bardez, Goa. ... Petitioner.

Versus

1. State of Goa, through
its Chief Secretary,
having his office at
Secretariat, Panaji,
Goa,

2. Directorate of Accounts,
Government of Goa,
Panaji, Goa,

3. State of Andhra Pradesh,
through its Chief Secre-
tary, having his office
at Secretariat, Hyderabad,
Andhra Pradesh, and

4. Union of India, through its
Secretary, Ministry of
Personnel, Public Grievance
and Pensions, Dept. of
Pensions and Pensioner's
Welfare, New Delhi 110 003. ... Respondents.

Shri M. S. Sonak with Shri C. R. S. Da Silva, advocates for the petitioner.

Shri Guru Shirodkar, Addl. Government Advocate for respondents no.1 and 2.

Shri V. P. Thali, Senior Central Govt. Standing Counsel for respondent no.4.

CORAM: D. G. DESHPANDE &
P. V. HARDAS, J.

DATE: 15th January, 2003

ORAL JUDGMENT (Per D. G. Deshpande,J.)

Heard Shri Sonak, learned counsel for the petitioner, Shri Shirodkar, learned Additional Government

Advocate for respondents no.1 and 2 and Shri Thali, learned Senior Central Govt. Standing Counsel for respondent no.4.

2. The petitioner was initially appointed as a Temporary Assistant Surgeon under the Government of Andhra Pradesh, w.e.f. 11th June, 1956, and was regularized w.e.f. 23rd June, 1956, in the same post. Then during the course of time, in 1971, he was promoted in Class I category of Andhra Pradesh Medical Service w.e.f. 11th January, 1970. In 1986, the petitioner applied to the post of Professor of ENT in the Goa Medical College. His application was forwarded through proper channel i.e through the Director of Medical Services of Andhra Pradesh. He was selected to the said post and he joined in Goa on 5th December, 1986. In order to join as Professor of ENT in Goa, the Andhra Pradesh Government relieved the petitioner w.e.f. 28th November, 1986, giving him seven days joining time.

3. Thereafter, the petitioner opted for voluntary retirement as he had completed more than 20 years of qualifying service and completed more than 50 years of age. The Government of India approved his voluntary retirement and, accordingly, he was informed. The grievance of the petitioner is that though his service with the Government of Andhra Pradesh was computed and considered while considering his period of qualifying service of 20 years, while fixing his pension, the Government of Goa refused to honour

pensionary benefit payable to him in respect of the services rendered by the petitioner with the Andhra Pradesh for a period of ten years and twenty-seven days and hence this petition.

4. According to the petitioner, since the date of his retirement he has been constantly in correspondence with all the authorities for redressal of his grievances and for granting him pensionary benefits by counting the services rendered by him with the Government of Andhra Pradesh as well as the Goa Medical College Hospital, but all his efforts failed and, therefore this petition.

5. This petition was opposed by the respondents. However, though notice was served upon respondent no.3, the State of Andhra Pradesh, nobody appeared for respondent no.3 at the time of arguments. The respondents relied upon a Circular of the Government of India dated 31st March, 1982. A copy of the Circular is filed in this petition at page 135 as Exh.F. The subject of the Circular is: "Allocation of pensionary liability in respect of temporary service rendered under the Government of India and State Governments." Para 1 of the Circular reads as under:-

> "I am directed to say that the Government of India have been considering in consultation with the State Governments, the question of sharing, on a reciprocal basis, the proportionate pensionary liability in respect of those temporary employees who had rendered temporary service under the Central Government/State

> Governments prior to securing posts under the various State Governments/Central Government on their own volition in response to advertisements or circulars, including those by the State/Union Public Service Commissions, and who are eventually confirmed in their new posts. It has since been decided in consultation with the State Governments that proportionate pensionary liability in respect of temporary service rendered under the Central Government and State Governments, to the extent such service would have qualified for grant of pension under the rules of the respective Government, will be shared by the Governments concerned on a service-share basis, so that the Government servants are allowed the benefit of counting their qualifying service both under the Central Government and the State Governments for grant of pension by the Government from where they eventually retire. The gratuity, if any, received by the Government employee for temporary service under the Central or State Governments will, however, have to be refunded by him to the Government concerned."

6. However, on the other hand, learned advocate for the petitioner relied upon a decision of the Supreme Court in **M. C. Dhingra** vs. **Union of India & Ors.** [(1996)7 SCC 564], wherein the Supreme Court in para 4 held that when the attention of the Supreme Court was drawn to Clause 4 of the Circular, which is to the effect that the Circular would be applicable to the Government Servants who retired from that date, namely 31st March, 1982 and the appellant before the Supreme Court had retired on lst February, 1973. Therefore, he was not eligible for the benefits of the Circular. The Supreme Court held as under:-

> " We find no force in the contention. All the persons who rendered temporary service prior to their joining the Government of India Service have been given the benefit of fixation of the pension payable by tagging the temporary service. The cut-off date is arbitrary

> violating Article 14 of the Constitution of India. Having grouped all the similarly circumstanced employees, fixing the cut-off date and giving benefit to those who retired thereafter is obviously arbitrary. In similar circumstances, following the ratio in **D. S. Nakara v. Union of India** [(1983) 1 S.C.C. 305], this Court held in the case of **R. L. Marvaha v. Union of India,** [(1987)4 S.C.C. 31] that such a restriction is arbitrary violating Article 14. On the facts and circumstances, we find that the restriction imposed in clause 4 of the circular is violative of Article 14. It is, therefore, unconstitutional. However, the appellant will be entitled to the pro rata pension from March 1982."

7. Learned counsel for the petitioners therefore contended that the pensionary benefits cannot be denied to the petitioner on the basis of the Circular dated 31st March, 1982, in view of the decision of the Supreme Court. We feel that there considerable force in this argument. The Supreme Court has clearly laid down that no such discrimination can be made and, therefore, consequently, the petition is to be allowed. Hence, we pass the following Order:-

The Writ Petition is allowed in terms of prayer (a) alongwith interest at 9% per annum. It is clarified that as per the Circular dated 31st March, 1982, whatever payments will be made by the Government of Goa to the petitioner after counting of the services rendered by the petitioner at Andhra Pradesh, the Government of Goa will be entitled to recover the same from the Government of Andhra Pradesh, respondent no.3 in this petition, which is absent, though served.

Counting and payment to be made to the petitioner within four months from today.

D. G. DESHPANDE, J.

P. V. HARDAS, J.

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